IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 211 of 1986
Date of decision: March 14, 2007

Jagraj Singh and others ...Petitioners

Versus

The Financial Commissioner, Revenue, Punjab and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL

Present: Mr. Gaurav Chopra, Advocate,
for the petitioners.

Ms. Manjit Kaur, Advocate, for
Mr. Onkar Rai, Advocate.

K.S.GAREWAL, J.

This petition relates to partition proceedings under the Punjab Land Revenue Act, 1887 (hereinafter referred to as **the Act**) in respect of 440 kanals 19 marlas of land situated at village Kulgarhi, Tehsil and District Ferozepur. The petitiones are Jagraj Singh, Gurbachan Singh and Harnek Singh sons of Suba Singh. Suba Singh had a fourth son Shamsher Singh who pre-deceased him. Harpal Kaur widow of Shamsher Singh and Harpal Kaur's five children Sarbjit Kaur, Sukhchain Singh, Amarjit Kaur, Iqbal Kaur and Manjit Singh are also petitioners with their father's brothers. Suba

Singh's widow Bachint Kaur too is a petitioner. Therefore, the petitioners are the widow, three sons of Suba Singh and the widow of a pre-deceased son alongwith her five children. The contesting respondents are Sukhjinder Singh, Harnek Singh, Gurnek Singh and Charanjit Singh sons of Bhag Singh, who have been arrayed as respondents 3 to 6. Remaining respondents 7 to 22 have been deleted from the array of respondents.

The contesting respondents had filed an application under Section 111 of the Act for partition of 440 kanals 19 marlas land. The mode of partition was determined and according to the plan of partition, the contesting respondents' share came to 26 kanals. The remaining land came to the share of the other co-owners. Consequently, partition was carried out vide order dated June 4, 1982 (Annexure P/1) passed by the Assistant Collector Ist Grade, Ferozepur. Suba Singh's family was not satisfied, therefore, they took the matter in appeal before Collector, Ferozepur. The Collector, vide order dated July 21, 1982 (Annexure P/2) came to the conclusion that the appellants before him had not been properly served and had been wrongly proceeded against ex-parte. Therefore, the order of the Assistant Collector Ist Grade dated June 4, 1982 was set aside and the matter was remanded back to him with a direction that he may afford a proper opportunity to the appellants (Suba Singh's group) to produce evidence and thereafter pass a fresh order. This order of the Collector, Ferozepur, dated July 21, 1982 was challenged before the Commissioner, Ferozepur by Bhag Singh's sons. The appeal was accepted by the Commissioner on October 11, 1982 (Annexure P/3) and the order of the Assistant Collector Ist Grade was maintained. Sube Singh's group took the matter to the Financial Commissioner in revision which was dismissed on

October 14, 1985 (Annexure P/4). Thereafter they filed the present writ petition on January 14, 1986 challenging the order passed against them. The sole ground of challenge was that the petitioners had not been served. Therefore, the partition of the joint holding was illegal.

In support of this contention, the learned counsel for the petitioners has argued that there was no evidence to show that either the petitioners had been personally served or through proclamation. There was nothing on the record to show that a proclamation had been issued. Furthermore, there was nothing to show that they had ever been personally served. Notice for service by proclamation was marked by the Tehsil jamadar to the peon on April 19, 1982 and it was sent to the Court on October 21, 1982. There was no date on the notice indicating when the proclamation was done. There was no report of the peon concerned on the said notice, therefore, it showed that no proclamation was done by beat of drum. In the absence of a valid notice, partition proceedings were invalid, illegal and not binding on the petitioners.

A perusal of the order of the Assistant Collector Ist Grade would show that one Tehal Singh son of Balbir Singh appeared before the Collector on his own behalf and on behalf of his three brothers Tek Singh, Mehal Singh and Mohinder Singh. Summons were again sent to the unserved respondents. Proclamation was effected on April 21, 1982 and despite proclamation the 10 respondents representing Suba Singh's family and some other respondents failed to appear. Therefore, they were all proceeded against ex-parte. The four sons of Balbir Singh had also failed to appear on April 1, 1982 and they too were proceeded ex-parte. But later they appeared on the same day and filed a reply.

The contentions of the petitioners are really based on what had been held in their favour by the Collector on July 21, 1982 (Annexure P/2). In appeal, the Additional Commissioner, Ferozepur Division on October 11, 1982, came to the following conclusion:-

i) That the report on the back of the summons is there on the file of trial court at page 416 and the same is in continuation of the summon at page 415 and the service was complete.

ii) That munadi was also effected for service of the 2 respondents.

iii) That moreover the respondents no. 11 to 14 appeared in the court and raised no objection.

iv) That no objection whatsoever was filed against the mode of partition.

v) That there is no dispute pending in any court of law regarding the title of the property in question.

vi) That the respondents are in possession of land in excess of their share.

vii) That since the absence of the respondents was intentional, they were proceeded exparte."

The Additional Commissioner further held as under:-

"...Another conclusion which can be drawn is that other respondents had full knowledge and the substituted service effected, therefore, in this case, can be safely supposed to be complete. When the partition is in accordance with the mode of partition and parties are getting their due share, no useful

purpose would be served in remanding the case. That will simply tantamount to keeping the aggrieved party out of possession. In my opinion, therefore, it is a fit case where partition has been finalized in accordance with the mode of partition and the learned A.C.I had correctly done it...."

All aspects of the case had been examined. The partition has become final. The petitioners have not been able to show how they were prejudiced by the partition. It would be grossly unjust and unfair to undo everything and send the case back for a fresh partition, if the result is likely to be the same. The petitioners have been harping on lack of proper service but they failed to show through documents or other material that they had been seriously prejudiced by the partition or that in a fresh partition the result would be much different.

I find no merit in this petition. Dismissed.

March 14, 2007 **(K.S.GAREWAL)**
prem **JUDGE**